

August 28, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 14th Administrative
Review of Heavy Forged Hand Tools from the People's Republic of
China

SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of heavy forged hand tools ("HFHTs") from the People's Republic of China ("PRC"). As a result of our analysis, we have made no changes to the preliminary rescission. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Rescission of Antidumping Duty Administrative Review, 73 FR 11867 (March 5, 2008) ("Preliminary Rescission").

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the issue in this antidumping duty administrative review for which we received comments and rebuttal comments from interested parties.

BACKGROUND:

The merchandise covered by the orders are HFHTs as described in the "Scope of the Order" section of the accompanying Federal Register notice. The period of review ("POR") is February 1, 2006, through January 31, 2007. In accordance with section 351.309(c)(ii) of the Department of Commerce's ("the Department") regulations, we invited parties to comment on our Preliminary Rescission. On April 4, 2008, Council Tool Company ("Council Tool"), a domestic interested party, filed a timely case brief. On August 9, 2008, Truper Herramientas S.A. de C.V. ("Truper"), a Mexican producer and reseller of hand tools, filed a timely rebuttal brief.

DISCUSSION OF ISSUE:

Rescission of Antidumping Administrative Review

Council Tool argues that documents collected at verification show that Truper's¹ system for tracking the country of origin of its hand tools resales did not in fact properly identify certain Chinese origin hand tools subject to the scope of the order, particularly with respect to Truper's master country of origin list. Council Tool argues that Truper and its customs brokers relied on this list when assigning the country of origin to products sold in the United States market.² Therefore, Council Tool argues that there is evidence on the record that Truper improperly classified Chinese origin products as Mexican origin for certain hand tools sold to the United States.

Council Tool asserts that since Truper does not track country of origin in a reliable way, Truper's claim that it has not exported subject merchandise to the United States cannot be verified and, in fact, is contradicted by other record information. Council Tool argues that for the final, the Department should find that Truper failed verification and assign, as adverse facts available, the PRC-wide rate of 175.04 percent to the entries of Truper's merchandise during the POR.

In rebuttal, Truper argues that Council Tool makes the mistake of relying upon country of origin information that: (1) is separate from the actual master country origin chart; (2) predates the POR; (3) was not relied upon by anyone to complete customs entry documents for United States market POR imports; and, most importantly, (4) is not related to any type of product that was sold to the United States during the POR.

Truper argues that of its three databases, only the "master list" database qualifies as the true master database in effect during the POR. Truper argues that the sub-list database to which Council Tool points has no probative value given that it was dated five months before the POR. Truper also argues that this sub-list is not a master list database as demonstrated by the fact that it identifies fewer individual part numbers than the "master list." Truper argues that in contrast, the "master list" database is dated September 2006, *i.e.*, in the POR, and that this database also covers many more individual part numbers, indicating that it is a master database. Truper argues that this database correctly identified the products at issue.

In addition, Truper argues that the Department verified seven country of origin sales traces and verified that Spanish-style axes³ (the only subject heavy forged hand tools Truper purchased from the PRC during the POR) were not sold to the United States during the POR. Finally, Truper argues that the importer/broker ultimately relied upon contemporaneous entry specific e-mail messages from Truper in reporting country of origin as noted by the Department in the verification report.

Department's Position:

¹ A Mexican producer and reseller of hand tools.

² Because Council Tool's comments rely heavily on business proprietary information ("BPI"), we have publicly summarized the main arguments here. For a detailed discussion of Council Tool's arguments, please see the BPI version of its case brief submitted on April 4, 2008.

³ The Spanish-style axes use tapered handles which are attached to the axe head differently than the U.S. style axes.

We find that there is no evidence that Truper made sales of the subject merchandise to the United States during the POR. At verification, Truper provided a detailed explanation and documentation regarding its system of tracking the country of origin for purchases made from the PRC that are subsequently resold. Specifically, Truper explained that the importers/brokers ultimately rely upon e-mails sent by Truper staff where it communicates the product's country of origin on an entry-specific basis for any products sold to export markets. See Verification Report at 6-9, 18 and Verification Exhibits 15 and 18. We found no evidence that: (1) Truper's hand tools identified by Council Tool were improperly misclassified as products of Mexico in any export sale; or (2) Truper sold Chinese-origin hand tools to the United States market during the POR.

At verification, Truper explained that it communicates the product's country of origin via direct e-mails to importers/brokers, which were provided at verification. Id. The country of origin assignments, identified in Truper's e-mails to importers/brokers, are derived from the master list (Lista de Productos).⁴ See Verification Report at 7-9 and Exhibit 10 at (Lista de Productos). The Department found no evidence that the e-mails by Truper staff were unreliable in identifying the product's country of origin and, contrary to Council Tool's argument, we found no evidence that importers/brokers relied on any sub-lists for country of origin identifications. Id.

In addition, the Department also conducted complete sales and cost reconciliations at verification and found no evidence that Truper sold any Chinese-origin Spanish-style axes to the United States during the POR. See Verification Report at 13. Although we recognize a discrepancy between the information on the sub-list and the master list (aka Lista de Productos), we do not accord much significance to it because, consistent with Truper's explanations, we found no evidence that Truper relied on this sub-list for country of origin assignment.

Council Tool has not provided any further arguments or information that causes the Department to revise its preliminary decision to rescind this administrative review. Therefore, we continue to find that Truper did not export Chinese-origin hand tools to the United States during the POR.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend affirming our Preliminary

⁴ During verification, Truper explained that it maintains a database of every product sold, regardless of market, which is called the Lista de Productos Con Clasificacion Arancelaria De Importacion y Exportacion ("Lista de Productos"). See Verification Report at Exhibit 10. For each product on the Lista de Productos, Truper identifies whether the product was imported, self-produced, product codes, etc. The Lista de Productos is essentially a live database which is routinely updated by Truper staff. See Verification Report at 17.

Rescission. If accepted, we will publish the final results of review in the Federal Register.

AGREE_____ DISAGREE_____

David M. Spooner
Assistant Secretary
for Import Administration

Date